IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.05 OF 2005
IN
CONTEMPT PETITION NO. 31 OF 2001

Pradip Mirchandani ...Petitioner

Versus

Minal Pradip Mirchandani & Anr ...Respondents

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Mr. Divias Madan with Mr. Anurup Dasgupta i/b M/s Jhangiani Narulla and Associates for the petitoner.

Mr. Haresh M. Jagtiani, Senior counsel a/w Ms. Rosita S. Parimal, and Mr. M.B. Singh, i/b M/s. Haresh Jagtiani and Associates, counsel for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATED: 4TH MARCH, 2005

P. C.:-

1. This application has been moved by the petitioner in Contempt Petition No. 31 of 2001 praying for issuance of non bailable warrant of arrest against the respondent No.1 and to direct the Commissioner of Police, Mumbai to arrest the respondent No.1 and produce her before this Court on or before 10.3.2005. By way of interim order, the applicant has prayed for impounding of passport of respondent No.1 and the minor son by name Sharan, in addition to, directing the Commissioner of Police to prevent the exit of the respondent No.1 from India by air, sea or road.

2. The contempt petition No. 31 of 2001 though has been admitted by this Court on 5.4.2003, the returnable date for hearing on Rule has not been fixed. The notice on Rule has been waived by the learned counsel for the respondents and therefore, after the said order was passed on 5.4.2003, there was no occasion for the respondents to remain present in person before this Court on any given date.

3. The petitioner and the respondent No.1 were married and out of the said wedlock, they begot two sons. The wife is presently residing in the United States of America and she is already re-married to an American citizen. The elder son is presently under the care of the petitioner-father whereas the younger son Sharan is with the respondent No.1-mother. It appears that by an order dated 8.12.2000 passed on the basis of the consent of the learned counsel for the respective parties, Contempt Petition No. 398 of 2000 was disposed of by this Court and on certain agreed terms between the parties and more particularly the younger son Sharan to be brought to India for a short period. It is alleged that the respondent No.1-wife willfully and deliberately violated the terms of this consent order and hence, as per the petitioner, she is guilty of contempt of this Court within the meaning of Section 2(b) of the

Contempt of Courts Act, 1971. The petitioner-father claims that he has not been able to meet his younger son for the last about four years and he therefore, insisted that the respondent No.1 be detained and she be directed to bring the son to India pursuant to the order passed by this Court on 8.12.2000. Admittedly, the wife has already obtained a divorce order from the Court in the U.S.A. and thereafter, the petitioner-husband lost in the divorce proceedings which he had initiated before the Family Court at Pune and, therefore, he has approached this Court in an appeal which is pending before the Division Bench.

4. Pursuant to the order passed in this application on 25.2.2005, the respondents have personally remained present in the Court from 28.2.2005 till today. The learned counsel for the respective parties have also tried their best to bring about some acceptable compromise between the parties but it appears that the same is likely to take some more time. Under these circumstance, it is necessary to examine whether the relief prayed for could be granted in this application.

5. The answer has to be in the negative and more so because after the Contempt Petition has been admitted, the wife waived service on Rule through her learned counsel, it would amount to notice to

respondent No.1 as well and unless the subsequent date was fixed for appearance either for hearing of the contempt petition or for some other reasons, her physical presence in the Court was not required and, therefore, after 5.4.2003, there is no incidence when the respondent No.1 could be alleged to have flouted the orders of this Court or tried to avoid to remain present before this Court. The appropriate indulgence by this Court in the instant contempt petition would be to list it for final disposal at the earliest possible and by taking into consideration the convenience of both the parties. The respondent No.1 wife stated through her learned counsel that summer vacation for the second son would begin from last week of May or first week of June, 2005 and she would also be in a position to remain present before this Court, if the date for final hearing is fixed some times in the second half of July or beginning of August, 2005. She also undertakes that when she remains present before this Court for final hearing of this Contempt Petition, her son Sharan would accompany her to visit India and this would be an assurance for the petitioner father as well to meet his second son.

6. List the contempt petition No. 31 of 2001 for final hearing in the week commencing from first August, 2005 and the respondent wife is directed to

remain present before this Court during the said week. In case, for any reasons the petition is not heard and decided by 5th August, 2005, she may submit an oral application seeking order of dispensing her presence thereafter.

7. Civil Application is disposed of in the above terms.

8. Certified copy is expedited.